

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Financial Account Numbers

Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).¹ The exemption applies to all agencies.²

Department of Health

Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.³ The information is confidential and exempt⁴ and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

Pursuant to the Open Government Sunset Review Act,⁵ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill reenacts the public records exemption for the Department of Health. It removes the exemption for financial account numbers because it is duplicative of the general exemption⁶ found in current law.

C. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to reenact the public records exemption for the Department of Health.

Section 2 provides an effective date of October 1, 2006.

¹ Section 119.071(5)(b), F.S.

² "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.

³ Section 119.0712(1), F.S.

⁴ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁵ Section 119.15, F.S.

⁶ Section 119.071(5)(b), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political

subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 21, 2006, the State Administration Council adopted a strike-all amendment and reported the bill favorably with committee substitute. The bill expanded the exemption, making it applicable to *all* agencies. The strike-all amendment removed the expansion and merely provided for the reenactment of the public records exemption for the Department of Health.